that were appealed. I knew the ones that were accepted, and those are the statistics we have, but how many were appealed, I actually don't know.

Senator LEAHY. Do you know how many were accepted? That is really what I mean.

Justice COOK. Yes.

Senator LEAHY. How many were accepted on appeal?

Justice COOK. I could get that for you.

Senator LEAHY. Two hundred?

Justice COOK. I would be making a wild guess, and the wild guess might be 50.

Senator LEAHY. Okay, and if it was 50, so 6 out of 50 that were reversed.

Chairman HATCH. Well, she does not know.

Senator LEAHY. No, that is okay. If you could get me the number for the record, please.

Justice COOK. Yes, sir.

Senator LEAHY. I just—because, obviously, you have a lot of cases that were never appealed or a cert was never granted.

Justice COOK. That's right.

Senator LEAHY. Thank you.

Thank you, Mr. Chairman.

Chairman HATCH. Senator Schumer?

STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, Mr. Chairman.

First, I want to make a couple of more comments just about the procedures here, and then I will get into questions. I will start with Professor Sutton.

But, first, I want to thank you, Mr. Chairman. You did renotice, after I brought up the hearing, you have renoticed it from Tuesday to Wednesday, so that will comply with the Committee rule that we have one week's notice, and I want to thank you for that as well.

Originally, we were going to have 5-minute periods, I was told, and we asked you to move it up to 15, and 15 is adequate, and we appreciate that.

What we are trying to do here is get a feeling that this is real, that these are real. You know, for us, for many of us, this is really significant, but we worry about the others.

One thing I would ask you, Mr. Chairman, could we get notification by today as to which judges or which nominees we are going to have before us next Wednesday?

Chairman HATCH. I think so. I have already told staff to try and—our obligation is give notice of the hearing.

Senator SCHUMER. Right.

Chairman HATCH. But I would like to give you as much—I had told Senator Leahy, at least two weeks ago, who was going to be on this.

Senator LEAHY. Maybe my memory—

Chairman HATCH. Senator Leahy's memory what?

Senator LEAHY. Maybe my memory is—

Chairman HATCH. His memory, once again, is faulty?

[Laughter.]

Senator LEAHY. —has slipped.

Chairman HATCH. Well, whatever. I did tell him.

Senator LEAHY. I know that you want to give us enough time to look at them because, to quote a distinguished Chairman of this committee, "The Chairman will schedule a hearing for a nominee only after thorough review of a nominee's preliminary information. Obviously, this is a long process, as it must be. After all, these are lifetime appointments," so said Senator Orrin Hatch, my dear friend and former chairman.

Chairman HATCH. Oh, my goodness.

[Laughter.]

Senator LEAHY. You never know when that stuff is going to come back to haunt you, Orrin.

Chairman HATCH. Well, let me—

Senator SCHUMER. I guess the point I want to make is having three substantial, controversial nominees to the court, to important Courts of Appeals is brand new. The notice, as I say, has not been thorough, and we do not even have Committee rules yet. We have not discussed what is happening with the "blue slip."

We have not discussed any of the other kinds of rules that this Committee has always prided itself on having, and then, to boot, today there were so few questions asked by people on the minority side, it just almost seemed like a rush to judgment. Let us just get this—I mean, majority side. The minority side we are going to ask plenty of questions. It is wishful thinking that we were the majority side, at least for me—but no questions asked, and it almost seems like, you know, this is a done deal to too many people on this committee.

The White House says put them in, get them done as fast as you can, as few questions as possible, and we will just move them, and I worry about that. I worry about it from a constitutional perspective because there should be real advise and consent, whether you agree, whether you are the same party or the different party, in terms of who is in the White House, and I would just hope we could back to some of that. I think, even during the worst of times, when we were in charge, we were never accused of rushing through people and—

Chairman HATCH. I think that is a fair characterization myself, but let me just say 630 days, it seems to me, is enough notice, and it certainly is enough time to evaluate people.

Senator SCHUMER. Well, you know, you say that, but officially we did not receive notice until last night, and—

Chairman HATCH. We will try to remedy that.

Senator SCHUMER. And there are reasons for that.

Chairman HATCH. We will try and remedy that.

Senator SCHUMER. And we ought to have them. I mean, let us hope this is all on the level and certainly at least fair process would help give it at least the appearance that that is the case.

I now want to direct some of my questions at Professor Sutton. Professor, you have probably been advised by those who have prepped you for this confirmation that I have three criteria I use when I weigh nominees, whether in helping choose them in New York, which I used to do—maybe still will do, do a little bit—but also in who I judge. It is excellence, moderation, diversity.

Excellence, legal excellence. These are such vital positions that you do not want some political hack or somebody who is somebody's friend to occupy them. I have no doubt you meet that criteria. You are a legally excellent mind.

The second criteria I have is moderation. I do not like judges too far left or too far right. In fact, in my own Judicial Review Committee, when people have come to me with some very liberal judges, well-known liberals on the New York bench, I have not chosen to select them because I think judges who are too far left and too far right want to make law themselves. They have such a passion for what is right and what is wrong, that instead of interpreting the law, which is what the Constitution says they should do, they end up making the law.

And, in fact, a lot of the conservative critique of the liberal courts of the sixties and seventies was shaped by that notion, and I find it ironic that the conservative movement is doing the same, exact thing now that they criticized people for.

It is a little bit of a mirror image of telling us now we ought to move judges on, say, the Court of Appeals, when we were constantly told when President Clinton was President, we do not need any more judges. The caseload is the same, and yet all of a sudden we are pushing judges through, and that is, again, what we have to live with here, but the lack of consistency in all of this is mind-boggling, and again makes you think that this is not on the level, which would be a shame for the Constitution and for the judiciary. So that is my second criteria.

My third one is diversity. I do not think the bench should be white males. You do not meet the diversity criteria, but you cannot judge it by one person, and that is not a problem for me here, but the moderation is.

And, frankly, by your record, to me, you are hardly a moderate. You have pointed views that are way beyond, I think, what most people would consider the mainstream, and you have helped shape and change the courts. Let me just go over a little history.

I mean, over the past several years, the Rehnquist Supreme Court has slowly and steadily affected a revolution, and they have engaged, in my judgment, at least, in startling acts of judicial activism, reaching out to strike down law after law that Congress has passed to protect women and workers, environment, the disabled, children and senior citizens.

And this court is leading the country down a dangerous path, where it seems States' rights predominate over people's rights. They call it federalism or they call it something else, but it is really just that, and we almost want to go back, whether it be the Eleventh Amendment or the Commerce Clause, to the 1890's because there is such anger and hatred for the Federal Government. So I worry about that.

And you, Mr. Sutton—Professor Sutton—you are a primary engineer of the road that court is traveling. We all know that. This is not just you happening to be plucked out as a 1 of 1,000 lawyers and say, please, represent us on this case. When you look at cases that make up the Rehnquist Court's revolution, *Sandoval*, *Garrett*, *Kimel*, *City of Berne*, have particular meaning, and those are the

cases that comprise the most significant parts of your impressive resume.

I have been struck by the comments that you are nothing but a, you did not say a country lawyer, but you might as well, a lawyer just representing your clients; that you do not really believe in the arguments you have made or your beliefs are irrelevant, you were just doing your job, but I think anyone who has reviewed your record can see that is not the case.

You were not just sort of like a corporate attorney who was picked to work for one corporation and then another. You have taken a leadership role in the Federalist Society, which has pushed this line of reasoning and the States' rights agenda. You have made public comments that you love the States' rights movement. You advance your agenda with a genuine ardor and passion, advocating positions that go even beyond where Justices Scalia, Rehnquist and Thomas have been willing to go.

I am just going to read, and then ask be inserted in the record, a number of quotes from you, at least they are all foot-noted, and I would ask unanimous consent the whole statement be added to the record with the footnotes.

Chairman HATCH. Without objection.

Senator SCHUMER. Okay, talking about this federalism, this State's rights. "It doesn't just get me invited to cocktail parties. . ." these are your quotes ". . .but I love these issues. I believe in this federalism stuff."

Here is another one, "First, the public has to understand that the charges of judicial activism that have been raised, particularly in the most recent term, are simply inaccurate. The charge goes like this: How is it that justices who believe in judicial restraint are now striking down all of these Federal laws? The argument, however, rests on a false premise. . ." These are your words. These are not quoted in a case. This is from an article that you wrote.

"In a federalism case. . ." again, your words ". . .there is invariably a battle between the States and the Federal Government over a legislative prerogative. The result is a zero-sum game, in which one or the other law-making power must fall."

Here is another one. "The public needs to understand that federalism is ultimately a neutral principle." Many of us would disagree with that. That is in the mind of the beholder, but it is certainly a view of yours, not who you are representing, but you.

"Federalism merely determines the allocation of power. It says nothing about what particular policies should be adopted by those who have power."

And it goes on, and on, and on. You discussed the *Morrison* case. "Unexamined deference to VAWA—Violence Against Women Act—findings would have created another problem as well. It would give to any Congressional staffer with a laptop the ultimate *Marbury* power to have final say over what amounts to interstate commerce, and thus to what represents the limits on Congress's Commerce Clause powers."

Right now, I disagree with these, but that is not my point here. My point is you are not simply a lawyer who was chosen to represent cases. You have been a passionate advocate for this point of view, and you state it not only when you represent a client before

a court, you state it in articles, you state it in conversation, et cetera.

Let me just say to you that, and this is the same question I asked Attorney General Ashcroft when he was here, although that was different because he is in the same branch of Government as the President, and we give the President a little more deference in that regard than we do Article III. You are passionate. You have strong beliefs that most objective observers would say, whether you think they are right or wrong, is way out beyond the mainstream. Many of the things you have said, as I said, neither Scalia, nor Thomas, nor Rehnquist has said in opinions.

And so how can we believe you, that when you have been such an impassioned and zealous advocate for so long that you can just turn it off, how do you abandon all that you have fought for—you have been a seminal voice in all of this for so long—given the fact that we all know that 100 lawyers looking at the same fact case do not always come under 100 judges with the same answer?

Mr. SUTTON. Right.

Senator SCHUMER. Please.

Mr. SUTTON. Thank you, Senator. You have raised several issues, and I will do my best to get to as many of them as possible.

First and foremost, someone who has the good fortune, first, of being nominated, and then the good fortune of being confirmed by the Senate, takes an oath, and when you take an oath, the whole point at that stage in your career is that your client is no longer your personal views, no longer a person for whom you advocated, but your client is the rule of law.

As a Court of Appeals judge, your objective, of course, is to do whatever the U.S. Supreme Court has required in that area. If they haven't provided guidance, follow what your Court of Appeals has required in that particular area, and I can assure you that's exactly what I would do as a lower court judge.

I would, respectfully, disagree with your comments, and I understand—

Senator SCHUMER. Please. We should have an open and fair debate here, not just go through the motions and, as Senator Leahy said, rubber stamp whoever the administration puts forward. I will not characterize interest groups the way my good friend, the chairman, does, but it seems that almost any time someone disagrees with what the nominee thinks, there are certain editorial pages, certain groups that say, "Oh, you know, they have an agenda." I mean, we should have an open discussion here. That is the whole point of advise and consent, not simply to find out if someone is of good moral character.

Please.

Mr. SUTTON. And I appreciate the opportunity to have the honor of having this discussion with the committee, and with you directly, and I know you have been an impassioned speaker on these federalism decisions and critiquing them, and I do want to turn to those, but before I do that, the one I guess I could fairly call it a premise of your question was that one can line up a series of cases, take five or six controversial cases and say, "Boy, anyone that could have advocated those positions must have a viewpoint that is just

inconsistent with anything I think is good and right about what Federal judges do and about what the Constitution means."

I, respectfully, disagree that that can fairly be said about me. I think there are many cases, representations I have handled that I think you would applaud, and if you wouldn't applaud, would at least respect my role as a lawyer.

I hope, in thinking about the federalism decisions, you will keep in mind cases I did before I worked for the State, whether it is writing a brief for the Center for the Prevention of Hand Gun Violence in the Sixth Circuit as an amicus brief, whether it's defending Ohio's hate crime statute on behalf of several branches of the NAACP, and the Anti–Defamation League and every other civil rights group affected by that law in Ohio, whether it's the work I did as State solicitor.

Keep in mind, while the States have done unfortunate things at times in our history, the States today are doing some good things. At Ohio, I twice defended Ohio's set-aside statute. I was, I think one can fairly say, very passionately involved in defending Cheryl Fischer in trying to get into Case Western Reserve with her disability of blindness.

Since leaving the Solicitor's Office, while out of practice, I have continued to handle those kinds of representations. I sought out and was hired to represent an indigent inmate in a Civil Rights case in the U.S. Supreme Court. That's one of the U.S. Supreme Court cases I did.

In terms of *Sandoval*, I've been on the other side of *Sandoval*. I have done a case involving implied rate of actions on behalf of Indian tribes for the National Congress of American Indians, and I was approached by them and hired by them to handle that case. That case is the mirror image of *Sandoval*.

I have handled two death penalty cases, which of course are about as much against States as one can ever be.

Now, when it comes to your perspective that when I have spoken to the press and the articles you referred to or when I have written articles—

Senator SCHUMER. Now, you do not express the sentiments of the people you represented in some of those cases in your private articles, only the ones on the other side.

Mr. SUTTON. I don't think that is true, actually. If you look at—

Senator SCHUMER. Okay. Well, you can submit to the record—

Mr. SUTTON. The tribute I did to Justice Powell, your second criterion, looking for moderates, I mean, if Justice Powell is not a moderate, then maybe I am wrong, and maybe I am not qualified, but I do think he was a moderate justice. He hired me. I wouldn't be sitting here, but for Justice Powell hiring me back in whatever it was, 1989–1990. I think my tribute to him suggests that very point.

I wrote another article for the Federalist Society in the *Kiryas oe* decision, criticizing the U.S. Supreme Court majority for not allowing the Satmar Hasidim to develop a district. Why did they want to develop that district? Precisely so handicapped citizens in that district could go to their own school and not have to go to the local public school, which was the only way they could get dis-

ability services. People that were not disabled in that district went to private hasidic schools.

So I think if you did—

Senator SCHUMER. Let me say this, sir, just with the *Sandoval* case, you could do 10,000 pro bono cases for individuals and the *Sandoval* case takes away rights of individuals to pursue the rights you were pursuing in those pro bono cases in one fell swoop, and I do not think some cases where you were pro bono undoes what *Sandoval* did. I mean, you are saying treat each case equally. I cannot.

Mr. SUTTON. I perfectly understand that point. On *Sandoval*—

Senator SCHUMER. I mean, the *Sandoval* took away rights of lots of individuals to be able to sue for just the things you were representing the pro bono individuals to be able to do, right?

Mr. SUTTON. *Sandoval*, keep in mind is a case—I've never written about it, I've never spoken about it—that's a case where the client position of the State in that case was developed long before I was involved. The Constitution—well, it wasn't a constitutional case—the statutory interpretation arguments developed long before I was involved.

When I was hired by that State to handle the case in the U.S. Supreme Court, as a lawyer upholding my oath to represent my client as best I possibly can, I had an obligation to make those arguments, but of course *Sandoval* is a statutory case. That can be corrected by this body tomorrow. I was simply representing them, and I would point out the Navajo case, where I represented these American Indian tribes, is the mirror image. It's an implied right of action case, and those briefs I think show anything but an hostility to implied rights of action.

As a judge, the reason I want to be a judge, Senator, is precisely so my client is a different client. The client is the rule of law, and that's the great honor of it.

Senator SCHUMER. But your view of what the rule of law is, based on these quotes, is far different than what most American judges, lawyers, students of juris prudence believe it is.

Mr. SUTTON. Well, if I could respond to that, a similar question was asked earlier this morning, and the quote simply indicates that, of course, I believe in Federalism as a principle. Federalism is a principle Court of Appeals judges have to follow in the same way they have to follow stare decisis. The problem where people disagree quite reasonably is the application of that principle in given cases.

Senator SCHUMER. Right. Well, let us talk about one given case. I understand your point. I want to talk about *Boerne*, the *City of Berne*. In that one, as you know, the Supreme Court held 5 to 4 that Congress had exceeded its power under Section 5 of the Fourteenth Amendment when it passed the Religious Freedom Restoration Act.

Senator DEWINE. [Presiding] Senator Schumer, you are 5 minutes over your time, but you can continue a reasonable time.

Senator SCHUMER. Let me just ask this one, and then I would ask for a second round because I have a bunch, and I very much appreciate that, Senator.

Senator DEWINE. Sure.

Senator SCHUMER. And I will try to sum it up quickly.

Anyway, you filed an amicus brief on behalf of the State of Ohio, and you argued the case in the Supreme Court. In that brief, you pushed an argument that went even further than the five–Justice majority on the Court was willing to go. You argued that Congress has no power, under Section of the Fourteenth Amendment, to enact any law to enforce religious freedom, free speech or any other provision of the Bill of Rights. That strikes me as a pretty radical argument.

Now, I understand you have been saying today you were just representing the State of Ohio, where my good friend is from. First, it is true, of course, that many other States—it is not inexorably that that is what Ohio had to believe—other States, including my State of New York, came to the opposite conclusion that you came to when they filed an amicus brief on the other side. So it was hardly a neutral interpretation of law that all States would agree with here. It is not so cut and dry, and it is not so obvious where the States' interest should be.

But what I am wondering here is who decided it was in Ohio's interest to advance such a radical proposition. Did the Governor direct you to file the brief and go that far, did the attorney general or did you decide to go on your own to take that extra step that no law could be passed in this regard?

Mr. SUTTON. Yes, Senator. I think there is a—I may be misapprehending your question, but I am pretty sure I'm not—

Senator SCHUMER. I am asking you did the Governor or the attorney general, say, make the argument that we should go further or was that your argument?

Mr. SUTTON. No one made the argument. That's the false premise. The argument you're referring to was made by the party, by the *City of Berne*, represented by another lawyer. This is quite critical because not only—

Senator SCHUMER. You did not argue in that case that the Congress has no power, under Section 5, to enact any law to enforce religious freedom?

Mr. SUTTON. In the oral argument itself, Justice Scalia asked me the very question you're raising because he noted that the city had said Section 5 of the Fourteenth Amendment only allows Congress to protect equal protection rights, and it is principally about race and voting. We did not make that affirmative argument in our brief.

During the oral argument, I went second, after the *City of Berne* lawyer. I specifically got up and said that is where we disagree with the party. Section 5, by its terms, covers everything in Section 1, and Section 1 includes the Due Process Clause. The Due Process Clause includes, by incorporation, free speech, free exercise of religion, all of these Bill of Rights provisions that have been incorporated.

Justice Scalia looked at me incredulously, saying that can't be right. And we said, no, by its terms, Section 5 covers all of these rights. So we not only didn't make that argument, we argued exactly the opposite that there was such a power. The quest—

Senator SCHUMER. That was in the brief? I haven't seen the oral argument, but the brief didn't say what you're saying to me now, did it?

Mr. SUTTON. Exactly. We didn't take a position on it, and during the oral argument—well, we were in amicus—during the oral argument, I specifically contradicted this point, even though the party on our side of the case—

Senator SCHUMER. But here is what I want to ask you: When you filed this brief, was it on direction from the attorney general or from the Governor or one of the elected officials? I do not know if the attorney general is elected in Ohio.

Senator DEWINE. He is. She is.

Senator SCHUMER. Okay, she is.

Mr. SUTTON. Yes.

Senator SCHUMER. Did they tell you to make this argument or did you come up with it? Answer that yes or no if you could.

Mr. SUTTON. The attorney general decides what arguments to make, and the attorney general had the final decision on whether that brief could be filed.

Senator SCHUMER. Did you suggest to him that the brief be filed the way it was before he said, fine?

Mr. SUTTON. She—

Senator SCHUMER. Who came up with—she, excuse me.

Mr. SUTTON. Betty Montgomery.

Senator SCHUMER. Excuse me. Who came up with the idea to file the brief, the amicus brief, and however far—we can dispute how far it goes—

Mr. SUTTON. Sure.

Senator SCHUMER. But who came up with that idea? Was it their idea, and you just followed what they said or did you come up with the idea and suggest it to them?

Mr. SUTTON. Neither of us. Neither of us, Senator.

Senator SCHUMER. Well, tell me how it came about. It did not just—it was not spontaneous generation.

[Laughter.]

Mr. SUTTON. Exactly.

Senator DEWINE. Senator, why do you not give him a chance to answer.

Senator SCHUMER. I will.

Senator DEWINE. You are 10 minutes over already.

Mr. SUTTON. Senator, what happened in the case was Ohio, like many other States, after RFRA was passed, had many lawsuits filed against them by prison inmates claiming that under RFRA they could have accommodations, and it led to lots of litigation. Some of it I think you would agree is somewhat frivolous—

Senator SCHUMER. No question.

Mr. SUTTON. —and some of it with merit, but lots of inmate litigation.

There's a Corrections Section of the AG's Office. I was not involved in this decision, so I don't know if it was the Correction official or Attorney General Montgomery. I suspect that Attorney General Montgomery would have been involved. They decided in those cases to raise the defense that RFRA could not be used to bring

these prisoner claims because it exceeded Congress's power. I was not involved in that decision.

When the *City of Berne* case made its way through the courts, by that time, the office and the State, the Correction officers of the State, had an interest in this litigation, and that's exactly what happened.

Senator SCHUMER. Let me, just I can come back to this, if I am taking too much time. I just want to go over, I have the brief here, and I wanted to go over a few of the points here, but I will wait and come back.

Senator DEWINE. No, if it is all in the same line of questioning and you want to continue, go right ahead.

Senator SCHUMER. So here is the brief that you filed. This is the brief for the amici States of Ohio and the others, and it says, "Betty Montgomery, Attorney General of Ohio; Jeffrey S. Sutton, State Solicitor Counsel."

This is on Page—well, this is a Westlaw, so I do not have the page. But it says, "Point No. 1B. The debate over the Fourteenth Amendment confirmed that the words mean what they say. When Congress had an opportunity to adapt a broader version of Section 5, which was offered in February 1866, it rejected the proposal to the amici States' knowledge. Moreover, no participant in the debates embraced the interpretation of the Fourteenth Amendment offered here; namely, that Section 1 incorporates most of the first eight amendments and that Section 5 allows Congress to enforce both the meaning of the amendments and any values underlying them." Does that not—

Mr. SUTTON. That is exactly correct, Senator, and the reason it's correct is the "and." The "and" point we were making in the brief was that no one in the Congress at that point, in proposing the Fourteenth Amendment, said, simultaneously, the Congress would have the final say over what the U.S. Constitution means, which is to say overrule *Marbury* v. *Madison*, and simultaneously say anything covered in Section 1, even incorporated rights in the other Bill of Rights, would be included.

Senator SCHUMER. But what you say here would exactly buttress—I mean, I will let you have the last word here—exactly what I said; that there could be no, it is not just some, but this is broad and sweeping, even with your "and" argument, that Congress would have no power under Section 5 to enact any law to enforce religious freedom; is that not correct?

Mr. SUTTON. With all respect, Senator, I couldn't disagree more, and I think it would have been poor advocacy, to say nothing of wrong, to make that argument. But the proof is not only the "and" that I referred to, but the proof is to read the transcript. The transcript doesn't indicate who the justice is. It was Justice Scalia. This was the exact point I made. I was challenged very hard by him on it, and I pushed back on it, and we won on that issue, on an issue I think you applaud, based on your questions. We won on that point. That's good.

Senator SCHUMER. Okay, well, I am going to come back to it. I am going to go read the brief, I mean, the oral argument, and we will come back to it. We will have a second round, I presume, Mr. Chairman; is that correct?

Senator DEWINE. Correct.

Senator SCHUMER. Thank you. I appreciate the committee, that I went on for a while.

Senator DEWINE. I would, at this point, ask unanimous consent that an article written by Jeffrey S. Sutton, entitled, "Justice Powell's Path Worth Following," that appeared in the Columbus Dispatch be submitted for the record made a part of the record, without objection.

Senator LEAHY. We have no objection.

Senator DEWINE. Without objection.

At this point, Senator Cornyn—

Senator SCHUMER. Mr. Chairman?

Senator DEWINE. Yes, Senator Schumer?

Senator SCHUMER. I just would ask unanimous consent. There are a whole bunch of letters of opposition to the nomination.

Senator DEWINE. They can be made a part of the record.

Senator SCHUMER. Without objection, I would ask that they be made part of the record.

Senator DEWINE. Absolutely.

Senator SCHUMER. Thanks.

Chairman HATCH. Senator Cornyn?

STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Thank you, Mr. Chairman.

Mr. Chairman, I am honored to be sitting here today. This is my first hearing where the Presidential's judicial nominees have come before the Committee and put their qualifications up for evaluation by the Senate in its constitutional role of advice and consent.

Since I am a new member of the committee, perhaps you will indulge me for a moment just to talk a second about the timing, the unfortunate timing sequence, since the President first nominated these two men and Justice Cook. It was May 2001 that the President first proposed these judicial nominees and, yes, it has been an inordinate amount of time leading up to today's hearing before they have had an opportunity to defend themselves and to present their record and to answer questions this Committee has about their qualifications to serve in the important positions to which the President has chosen them.

I know that during the opening statements there were statements made by Senator Leahy about the past, and I want to tell Senator Leahy, and those on the other side of the aisle on the committee, that I, as a new member of the committee, you will perhaps allow me to say that I hope that the Committee can have a fresh start.

I do not think it serves the interests of the American people for us to point the finger across the aisle and say because Republicans did not act on a timely basis on appointees of President Clinton that perhaps the same ought to be done in retribution when there is a Republican in the White House and when Democrats are in the majority.

While I have reservations under the Separation of Powers provision of our Constitution about the President's proposal for a time table—I do not believe that should be imposed. Indeed, it cannot